STATE OF MICHIGAN

COURT OF APPEALS

GWENDOLYN MINGO, CITIZENS OF BRUSH PARK, REVEREND MARY GAUSE, WARREN GAITHER, DOROTHY ROBINSON, MARCIA BURNETTE NICHOLS, PATTY BURNETTE JONES, and ANDREW J. BURNETTE, JR.,

Plaintiffs-Appellants,

and

BRUSH PARK CITIZENS DISTRICT COUNCIL, KEITH NOBLE, LEON THOMAS, RUTH DIGGS, QUENTIN MINGO, ERNESTINE NOBLE, DEACON LEON THOMAS, MARILYN REED, GRACE DAVIS, DR. BARBARA WOMACK, FAYE DAVIS, MABEL NORA, REVEREND VELMA ROSEMUND, DOUGLAS FULLER, FRANK FULLER, ANNIE JACKSON, NATHANIEL JACKSON, and REVEREND ORA MARIE CLAY,

Plaintiffs,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
June 17, 2008

No. 277403
Wayne Circuit Court
LC No. 00-013030-CZ

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Plaintiffs, residents, and business owners in the Brush Park Historic District in Detroit appeal by delayed leave granted[1] the trial court's order granting defendant's motion for summary

[1] This Court granted plaintiffs' delayed application for leave to appeal limited to the issues raised in the application. *Mingo v Detroit*, unpublished order of the Court of Appeals, entered August 27, 2007 (Docket No. 277403).

disposition under MCR 2.116(C)(10) and dismissing plaintiffs' claims in this class action lawsuit. We affirm.

Plaintiffs first contend that the trial court improperly dismissed their inverse condemnation claims based on defendant's "de facto" taking of their property. We review a lower court's determination regarding a motion for summary disposition de novo. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 396-397; 605 NW2d 685 (1999). "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in [the] light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *MacDonald*, *supra* at 332. We review a trial court's determination regarding the constitutionality of a taking de novo. *Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 248; 701 NW2d 144 (2005).

Effective December 23, 2006, the Michigan Constitution was amended to provide as follows in relation to the taking of private property:

> Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. Compensation shall be determined in proceedings in a court of record. "Public use" does not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenues. Private property otherwise may be taken for reasons of public use as that term is understood on the effective date of the amendment to this constitution that added this paragraph. In a condemnation action, the burden of proof is on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property is for a public use, unless the condemnation action involves a taking for the eradication of blight, in which case the burden of proof is on the condemning authority to demonstrate, by clear and convincing evidence, that the taking of that property is for a public use. Any existing right, grant, or benefit afforded to property owners as of November 1, 2005, whether provided by this section, by statute, or otherwise, shall be preserved and shall not be abrogated or impaired by the constitutional amendment that added this paragraph. [Const 1963, art 10, § 2 (as amended).]

Prior to the 2006 amendment, this section simply read:

> Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record. [Const 1963, art 10, § 2.]

Under its power of eminent domain, a government entity may condemn private property for a public use if it pays the owner just compensation. *Wayne Co v Hathcock*, 471 Mich 445, 457-458; 684 NW2d 765 (2004). A government entity engages in a "de facto taking" when it "fails to utilize the appropriate legal mechanisms to condemn property for public use." When the government takes private property in such a manner, the owner may bring an "inverse condemnation" suit. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 187-188; 521 NW2d 499 (1994); *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 125; 680 NW2d 485 (2004).

When a government entity properly exercises its powers and "'does not directly encroach upon the property of an individual, or disturb him in its possession or enjoyment,'" there is no compensable taking. *Peterman*, *supra* at 188, quoting *Vanderlip v Grand Rapids*, 73 Mich 522, 535; 41 NW 677 (1889). Yet, a taking need not involve a physical seizure or intrusion upon private property. The government action need only deprive the owner of the enjoyment, or partial enjoyment, of his or her property. *Peterman*, *supra* at 189. A de facto taking may even occur when "the effect of a governmental regulation . . . 'prevent[s] the use of much of plaintiffs' property . . . for any profitable purpose.'" *Id*. at 190, quoting *Grand Trunk Western R Co v Detroit*, 326 Mich 387, 392-393; 40 NW2d 195 (1949). Even a partial decrease in value amounts to a taking. *Peterman*, *supra* at 190, quoting *Vanderlip*, *supra* at 534; *Merkur*, *supra* at 125. When considering the extent of a de facto taking, the court must consider the "aggregate" of the government entity's actions. *Id*. The court must also consider the "form, intensity, and the deliberateness" of the actions taken. The plaintiff bears the burden of establishing causation in a "de facto" taking case. The plaintiff must show that "the government's actions were a substantial cause of the decline of its property" and that the "government abused its legitimate powers in affirmative actions aimed at the plaintiff's property. *Id*. at 130.

The named plaintiffs brought this suit as a class action on behalf of all residents and business owners of Brush Park. To proceed in a class action, the class must be "so numerous that joinder of all parties is impracticable" and plaintiffs must establish predominating "questions of law or fact common to" all class members. The claims of the named plaintiffs must be "typical" of the class and those named parties must be able to "fairly and adequately" assert and protect the interests of the class. MCR 3.501(1). Further, the court must determine that a class action is the "superior" method of adjudicating the issues. MCR 3.501(2). The named representative must be an actual class member. *A & M Supply Co v Microsoft Corp*, 252 Mich App 580, 598; 654 NW2d 572 (2002). Although the issues in the case must be common to all class members, the class members need not have suffered identical damages. *Id*. at 600.

Plaintiffs compare this case to *Merkur*, *supra*. This Court described the defendant city of Detroit's actions in that case as "blight by planning." *Id*. at 124. The defendant developed a plan to expand City Airport and began condemning surrounding properties necessary for the expansion. Although the plaintiff's property was included in the expansion plan, the defendant procrastinated for more than a decade without formally condemning the property. In the meantime, the defendant and the Federal Aviation Administration (FAA) denied the plaintiff's requests to expand its business onto a five-acre vacant portion of its property. Ultimately, a jury found in the plaintiff's favor during an inverse condemnation trial and awarded damages. *Id*. at 118-122, 124. In *Merkur*, the aggregate of the defendant's actions created the taking. The defendant filed an airport layout plan with the FAA that included the plaintiff's land as part of its

expansion. The defendant accepted grant money from the FAA in exchange for its promise not to allow any new construction in the plan area. As a result of the plan, the FAA denied the plaintiff's request for a tall building variance for its proposed new construction. The defendant condemned other properties in the plan area and closed roads making access to the plaintiff's property very difficult. Defendant evidently wanted to artificially reduce the value of the plaintiff's property to reduce the cost of condemnation. *Id*. at 125-127.

Detroit Bd of Ed v Clarke, 89 Mich App 504; 280 NW2d 574 (1979), presents another example of urban blight by planning. In that case, the plaintiff school district waited 15 years to formally condemn the defendant's rental residential property. In the meantime, the defendant's property value decreased due to deterioration in the neighborhood and the number of houses that had been demolished for the plaintiff's project. Over the years, the plaintiff repeatedly changed the date on which the defendant's property might be condemned and even removed it from the project plan for a period of time. After ten years of uncertainty, the defendant was no longer able to secure tenants and was required to board up his rental property. Shortly thereafter, the defendant razed the house. *Id*. at 507. This Court held that a government "may not by deliberate acts reduce the value of private property. *Id*. at 508-509, citing *In re Urban Renewal, Elmwood Park Project*, 376 Mich 311, 317; 136 NW2d 896 (1965).

> Actions found to be deliberate include the filing of lis pendens, the published threat of condemnation, mailing letters and circulars concerning the project to area residents, refusing to issue building permits for improvements coupled with intense building violation inspection, reductions in city services to the area and protracted delay and piecemeal condemnation and razing. [*Clarke, supra* at 509.]

Other actions are not per se evidence of a taking without "proof of calculated action or specific directives by city officials for the purpose of reducing the value of appellant's properties." *In re Urban Renewal, supra* at 317. These other actions include the unsatisfactory provision of city services, such as "lax police protection, reduction in refuse collections, street cleaning and street repair." *Id*. To amount to a taking, the government must do more than create and publicize project plans. "Threats must be coupled with affirmative action such as unreasonable delay or oppressive conduct directed to the neighborhood as a whole." *Clarke, supra* at 509.

In the trial court, defendant claimed that it would be immune from liability under the governmental immunity statutes. In *Hinojosa v Dep't of Natural Resources*, 263 Mich App 537, 548-550; 688 NW2d 550 (2004), this Court determined that the government's "negligent failure to abate a nuisance" that indirectly affects the private property of another amounts to a tort claim for which there is no exception under the governmental immunity statutes. Therefore, the government's failure to abate the nuisance does not amount to a taking. *Id*. *Hinojosa* is inapplicable to the current case. In *Hinojosa*, *supra* at 539, the state acquired a single piece of property after tax delinquency proceedings. The state failed to secure or demolish the house, thereby creating a fire hazard to neighboring homes. In the current case, plaintiffs allege that defendant negligently failed to maintain numerous city-owned properties in Brush Park as part of a concerted action to reduce the value of property in the area. Accordingly, this case is more akin to those cases in which the government engaged in "planned urban blight."

We agree with the trial court that the named plaintiffs failed to create a genuine issue of material fact that defendant unconstitutionally took their property. This case is dissimilar to the "blight by planning" cases because Brush Park was already a blighted neighborhood when defendant created its development plan. Between 1980 and 1990, the population of Brush Park decreased 60.4 percent. Although defendant owns a large amount of property in Brush Park, most of these properties were acquired by tax foreclosure or from a state deed after a state tax foreclosure. Plaintiffs alleged that defendant failed to demolish unsafe and dilapidated structures and accused defendant of inappropriately demolishing historic structures that were capable of renovation, such as St. Patrick Church and the Richardson Romanesque Row Houses. However, the only supporting evidence supplied by plaintiffs was a newspaper article that merely reiterated plaintiffs' allegations without citing any proof. It is true that defendant has taken a long time to implement its plans to rehabilitate Brush Park. Yet, plaintiffs presented no evidence that defendant deliberately delayed to decrease the cost of condemning property in Brush Park. Plaintiffs also presented no evidence that defendant made the blighted condition of Brush Park any worse.

Furthermore, the named plaintiffs failed to establish that they suffered any damages as a result of defendant's alleged actions and omissions. We note that plaintiffs have abandoned any claim in relation to plaintiff Reverend Mary Gause by failing to make any argument in relation to her alleged damages or claims in their response to defendant's motion for summary disposition or on appeal. We will "not search the record for factual support for plaintiffs' claims." *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004).

Class representative Gwendolyn Mingo testified that she spent $340,000 purchasing and rehabilitating her property. Mingo testified that her property increased threefold in value and, therefore, clearly could not establish that she was damaged. Plaintiffs attempted to expand the record on appeal by claiming that an appraiser valued Mingo's home at only $52,000 in March 2007. We may not consider evidence presented for the first time on appeal. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Mingo alleged that defendant wrongfully denied her application for a grant that she would have used to refurbish the exterior of her home. Yet, Mingo admitted that she illegally erected a fence around city-owned property, which she refused to remove. Mingo alleged that her property value was negatively impacted because defendant placed roadblocks at the ends of her street preventing vehicular traffic. After years of lobbying, defendant agreed to reopen the street for vehicular traffic and began reconstruction in 2004. Mingo then filed suit in federal court to enjoin the construction. In fact, Mingo was making a profit from her property by renting rooms to tenants. Finally, Mingo claims that defendant negatively affected her property value by identifying her home on the future condemnation list in the development plan, but never making an offer to purchase her property. However, the plan clearly states that Mingo's historic home would be exempted from condemnation procedures if she renovated the property, which she has done.

Class representatives Warren Gaither and Dorothy Robinson also could not establish any damages. Leaseholders, as well as property owners, may assert that their property was taken by governmental action. *Merkur*, *supra* at 134. Accordingly, it is irrelevant whether these plaintiffs were tenants or had taken ownership of their apartments. However, plaintiffs failed to present any evidence that defendant caused the blighted conditions that "forced" Gaither and Robinson from their homes. A federal court has already determined that gas service was disconnected

from the apartment building because the landlord failed to pay the bill. Thereafter, the tenants failed to pay rent and the bankruptcy receiver had no funds to pay for the utility. *Robinson v Michigan Consolidated Gas Co*, unpublished opinion of the Sixth Circuit Court of Appeals, issued October 19, 1993 (Docket No. 92-1452); *Robinson v Michigan Consolidated Gas Co Inc*, 918 F2d 579, 581-582, 590 (CA 6, 1990). Ultimately, Gaither moved because his apartment was burglarized. Gaither claims that his business was also forced out of the neighborhood. However, Gaither testified only about highly speculative plans to open a restaurant in a building without heat or water. Further, Gaither described his "production company" more like an advisory council to the Brush Park Citizens District Council (BPCDC). Robinson was forced to move her theater company because a fire destroyed the building. Further, although Robinson claimed that defendant promised her the use of the St. Patrick Church, which was subsequently demolished, plaintiffs have presented no evidence in that regard.

Class representative Marcia Burnette Nichols and her siblings, Patty Burnette Jones and Andrew J. Burnette, Jr., also failed to establish any damages. The developers of the Woodward Place community offered them $90,000 for their apartment building. Nichols failed to have the property appraised before rejecting the offer. Thereafter, Nichols operated the apartment building at a loss but refused to open the building to tenants other than senior citizens. However, Nichols admitted that the value of her property would likely increase as a result of the construction of the nearby Woodward Place community.

In summary, plaintiffs failed to create a genuine issue of material fact that defendant made a concerted effort to increase blight in Brush Park in an attempt to reduce property values. Further, none of the named class representatives presented any evidence that their property values decreased as a result of defendant's alleged conduct. Accordingly, the class representatives could not establish that defendant had taken their property without just compensation and the trial court properly dismissed the inverse condemnation claim.

Plaintiffs next contend that the trial court improperly dismissed their claims in relation to defendant's alleged violation of the blighted area rehabilitation act (BARA), MCL 125.71 *et seq*. We review issues of statutory construction de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). The BARA was enacted to allow local governments to rehabilitate blighted areas in order to increase the tax base and improve the safety, welfare, and character of the community. MCL 125.71. In rehabilitating blighted areas, the government may acquire and transfer real property in compliance with the act. MCL 125.73. Before rehabilitating a blighted area or conducting such land transfers, the city council must adopt a development plan. MCL 125.74(3). The city council must approve of defined district areas that will be rehabilitated and must conduct public hearings when considering the definition of those areas. MCL 125.74(4). A citizens district council (CDC) comprised, to the maximum extent possible, of local residents must represent each district area. MCL 125.74(5)(a). The members of the CDC may be elected by the local residents or may be appointed by the mayor after consultation with local community groups. MCL 125.74(5)(c). CDCs serve an advisory purpose and must be kept notified during the creation of a development plan for the area, in relevant part, as follows:

> (6) The local official responsible for preparation of the development plan within the district area shall periodically consult with and advise the [CDC] regarding all aspects of the plan, including the development of new housing for

> relocation purposes located either inside or outside of the development area. The consultation shall begin before any final decisions by any local planning agency or local legislative body regarding the development plan other than the designation of the development area. The consultation shall continue throughout the various stages of the development plan, including the final implementation of the plan. The local officials responsible for the development of the plan shall incorporate into the development plan the desires and suggestions of the [CDC] to the extent feasible. A local commission, public agency, or local legislative body of any municipality shall not approve any development plan for a development area unless there has previously been consultation between the [CDC] and the local officials responsible for the development plan . . . .
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> (7) The chief executive officer of the municipality shall give the [CDC] written notice of any contemplated zoning change, hearing, or condemnation proceedings within the district area . . . . Upon receiving a request from the [CDC], the local legislative body shall hold a public hearing on the proposed zoning change or condemnation proceedings . . . .
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> (8) In a municipality with 2 or more district areas, each [CDC] shall elect 4 of its members who shall compose the entire membership of the coordinating council on community redevelopment. The committee shall advise local units of government on proposed policy on urban renewal, make recommendations for new projects, and promote better relations between local units of government and residents of urban renewal areas. Notwithstanding any other provisions of this act, the formation of a coordinating council on community redevelopment shall not be a requisite for or condition of the exercise of the powers granted by this act for the acquisition, sale, or lease of real property, or the carrying out of a development plan in a development area. [MCL 125.74.]

The city council may adopt a development plan and relocation plan for the area after "consultation with" the CDC and conducting a public hearing. MCL 125.74(9); MCL 125.74(11). Subsection (9) enumerates the various elements that must be included in the development plan, including a consideration of the racial composition of the area affected. See MCL 125.74(9)(c). Following the public hearing regarding the potential adoption of a development plan, the CDC is given ten days to consider the plan and express its approval or disapproval. The city council must then consult with the CDC and consider its objections. However, the CDC is not given a veto power. The city council may adopt the plan or a modified plan after 30 days. MCL 124.74(12). If the city wishes to modify the development plan before any property has been transferred, it must conduct an additional public hearing. After property has been transferred under the original development plan, however, the city need only get the approval of the lessee or purchaser of the affected property before amending the plan. MCL 125.79. Ultimately, all actions of the city in relation to the BARA must be done by ordinance or resolution. Whenever a city passes an ordinance modifying a development plan, the modifying ordinance is dependent on the original, validly enacted ordinance. MCL 125.82.

We disagree with plaintiffs' assertion that defendant violated the BARA by circumventing the BPCDC and delegating that group's powers to private developers and outside organizations. Pursuant to MCL 125.74(6), the BPCDC serves only an advisory role in the

planning process. Defendant is required to keep the BPCDC notified of all aspects of the plan and to continue to consult with the BPCDC through the enactment of the development plan by ordinance. According to the plain language of the statute, defendant is only required to incorporate the "desires and suggestions" of local residents, as expressed by the BPCDC, "to the extent feasible." MCL 125.74(6). There is no support in the statutory language for plaintiffs' contention that the BPCDC played a larger role in the development process.

We disagree with plaintiffs' contention that defendant improperly approved the initial development plan and, therefore, all future development plans must be void. Plaintiffs failed to present the 1989 development plan into evidence. Accordingly, there is no record indication that the 1989 plan was anything more than a working copy used for purposes of debate. Before the 1990 development plan was enacted by Detroit Ordinances, § 12-90, defendant conducted public hearings at which the plan was "hotly debated." Defendant conducted further public hearings before the enactment by ordinance of the 1995 and 1996 modified development plans. Therefore, the original development plan was properly adopted pursuant to MCL 125.74 and MCL 125.82 and the subsequent plans properly modified the original.

We also disagree with plaintiffs' contention that the development plan promoted racial segregation in housing. The BARA discourages racial segregation as a result of the rehabilitation of blighted areas:

> No action taken under this act shall have the effect of promoting or perpetuating racial segregation in housing. To secure this objective, the local legislative body, municipal officials and agencies, [CDC], and the coordinating council on urban redevelopment may consult with and seek the assistance of the state civil rights commission. [MCL 124.74a.]

Plaintiffs never claimed to have exhausted their administrative remedies by consulting with the state civil rights commission. Even so, although African-American households were affected at a higher rate than white families, plaintiffs presented no evidence that defendant was motivated by racial considerations.

Furthermore, we disagree with plaintiffs' contention that defendant failed to provide relocation benefits to displaced individuals as required by the development plan. The BARA requires the government to provide assistance in the relocation of displaced residents. The city council must designate a local agency to provide information, assistance, and advice to displaced individuals who must relocate. MCL 125.74(10). The city may not cause an individual to be displaced "until other adequate housing accommodations are available . . . ." MCL 125.75. In fact, the development plan must include information regarding available alternative housing within the displaced individuals' price ranges and within equivalently desirable locations (both in regard to convenience and quality). MCL 125.74(9)(a). The development plan indicated that defendant's designated agency must recommend one alternative rental unit to each displaced tenant. The plan also indicated that defendant would recommend real estate agents to displaced homeowners. In addition, defendant promised to pay moving expenses, replacement housing and rental credits, and hardship benefits to individuals displaced under the plan. There is no record indication that defendant did not do the things it promised or was required to do under the act. As noted, *supra*, defendant did not take any of the named plaintiffs' properties. Accordingly, they were not displaced under the plan and were not entitled to relocation benefits.

There is no indication that any resident whose property was actually taken by defendant was not given the promised assistance and benefits. Therefore, plaintiffs' claim must fail.

Finally, we note that we disagree with plaintiffs' contention that the trial court improperly determined that plaintiffs sought relocation benefits under the economic development corporations act (EDCA), MCL 125.1601 *et seq*. and the relocation assistance for displaced persons act (RADPA), MCL 213.321 *et seq*. Plaintiffs expressly alleged in the fourth amended complaint that defendant violated those statutes by failing to provide relocation assistance and benefits to residents. In any event, plaintiffs would not have been entitled to relocation benefits under the BARA or the development plan.

Plaintiffs next contend that the trial court erroneously determined that they did not allege that defendant violated the EDCA. In their response to defendant's motion for summary disposition, plaintiffs alleged that defendant violated the EDCA in relation to the hospice development project. Specifically, plaintiffs asserted that defendant was required to proceed under the BARA, rather than the EDCA, because Brush Park had already been identified as a blighted area under that act. The rehabilitation of the blighted area was already a project under the BARA pursuant to MCL 125.72(h) and, therefore, could not be a "project" as defined under the EDCA. Plaintiffs further alleged that the hospice project plan failed to include a survey describing the families and individuals to be displaced as required by MCL 125.1608(4)(l), a plan for establishing the priority of persons to be relocated pursuant to MCL 125.1608(4)(m), the costs of relocation pursuant to MCL 125.1608(4)(n), and a plan to comply with the RADPA pursuant to MCL 125.1608(4)(o). Plaintiffs asserted that defendant was required to create a project citizens district council (PCDC) because the hospice project required a zoning change and involved the demolition of private property. Further, plaintiffs alleged that defendant failed to consult with the existing BPCDC before entering into the project. Accordingly, plaintiffs clearly alleged specific violations of the EDCA contrary to the trial court's opinion.

However, we may affirm a trial court's decision when it reached the right result for the wrong reason. *Netter v Bowman*, 272 Mich App 289, 307-308; 725 NW2d 353 (2006). The Legislature enacted the EDCA to allow local communities to alleviate unemployment through various programs aimed at, among other things, increasing industrial and commercial enterprises and development. MCL 125.1602. In developing a project under the EDCA, the government shall establish a PCDC comprised of area residents to advise the developer and the government. MCL 125.1612; MCL 125.1613. A project under the EDCA may be developed in an area that has already been identified as a blighted area under the BARA. In such an area, the preexisting CDC may be designated as the PCDC as well. MCL 125.1616. There is no record indication that defendant officially designated the BPCDC as the PCDC in relation to the hospice project. However, defendant's planning and development department indicated that the BPCDC approved of the hospice project and a public hearing was conducted on November 14, 1995. The project was also considered at a public hearing on September 24, 1996.

We further disagree with plaintiffs' contention that the hospice project plan failed to include relocation plans as required by MCL 125.1608(l)-(o). The hospice project was incorporated into the 1995 and 1996 modifications to the Brush Park development plans. Those plans included community surveys, relocation assistance programs, and a budget for relocating the affected individuals and families.

Plaintiffs contend that the trial court improperly dismissed its claim under 42 USC 1983. That claim was based on plaintiffs' claims that defendant unconstitutionally took their property and violated the BARA. Given that the trial court properly dismissed those claims, the trial court was required to also dismiss plaintiffs' § 1983 claim.

Finally, plaintiffs contend that the trial court improperly dismissed their claim that defendant violated the local historic districts act (LHDA), MCL 399.201 *et seq*. Plaintiffs asserted that defendant violated MCL 399.214(1), which provides that a city must appoint an historic district study committee before establishing, modifying, or eliminating an historic district. However, defendant never attempted to modify or eliminate the historic district. It appears that plaintiffs actually alleged that defendant altered the historic character of the neighborhood in violation of other subsections of the act.

Pursuant to MCL 399.202, defendant was entitled to alter, excavate, or demolish historic structures in the Brush Park Historic District to "stabilize and improve property values," to "foster civic beauty," or for the "welfare of the citizens." Before doing any work that will affect the exterior of a structure within an historic district, the renovating party must obtain a permit from the historic district commission. MCL 399.205(1). If the owner conducts renovation work without a permit and the commission finds the exterior to be nonconforming, the commission may order the owner to restore the exterior to its previous condition or modify the exterior to conform to the district's character. MCL 399.205(12). The historic district commission must conduct its business at open meetings at which community members can voice their concerns. MCL 399.205(7). A property owner may be deemed to have demolished his or her property through neglect if "neglect in maintaining, repairing, or securing a resource . . . results in deterioration of an exterior feature of the resource or loss of structural integrity of the structure." MCL 399.201(g). If the historic district commission determines that a property is in danger of demolition by neglect, it may order the owner to "repair all conditions contributing to demolition by neglect" or may conduct the repairs itself at the owner's expense. MCL 399.205(11). Ultimately, the remedies for a violation of the LHDA are limited to a $5,000 fine or a court order requiring the violating party "to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated, or demolished." MCL 399.215.

Plaintiffs generally allege that defendant demolished historic structures that should have been saved and allowed other historic structures in its possession to deteriorate by neglect. Plaintiffs provided two examples of structures that allegedly should not have been torn down but presented no evidence that these structures were safe or salvageable. Plaintiffs also generally allege that defendant failed to acquire the proper approvals before demolishing historic structures. However, plaintiffs presented no records from the historic district commission as evidence of the lack of its approval or defendant's inaction. A party must do more than raise mere allegations to avoid dismissal under MCR 2.116(C)(10). *Quinto v Cross & Peters Co*, 451 Mich 358, 371; 547 NW2d 314 (1996).

Plaintiffs also claim that defendant failed to secure state and federal approval before demolishing structures designated as historic structures under the state and federal registers. However, plaintiffs never cited the federal or state laws (other than the LHDA, which confers power to local historic district commissions). "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *American*

Transmission, Inc v Channel 7 of Detroit, Inc, 239 Mich App 695, 705; 609 NW2d 607 (2000). Such issues are considered waived on appeal. *Id.*

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen